IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 191 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME-TAX

Versus

CAMA HOTELS PVT. LTD.

Appearance:

MR BB NAIK for MR MANISH R BHATT for Petitioner No. 1

MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 12/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the assessee as well as the revenue, the following two questions have been referred to this Court for its opinion by the Income Tax Appellate Tribunal Ahmedabad Bench 'C' under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

At the instance of the Revenue:

1. Whether hotel building, furniture and fixtures could be treated in law as "plant" and the assessee is entitled to claim depreciation on that basis?

At the instance of the Assessee:

2. Whether, on the facts and in the circumstances of the case, the assessee was entitled to investment allowance of Rs. 1,35,403/- in respect of electrical installations, ice-cream making machine, refrigerators, air conditioners, etc.?

2. Learned advocate Shri B.B. Naik has appeared for the revenue whereas learned advocate Shri Manish J. Shah has appeared for the assessee.

3. So far as the first question is concerned, a portion of the said question has been answered by the Supreme Court in case of CIT v. Anand Theatres, 244 ITR 192. It has been held in the said case that a hotel building cannot be treated as a "plant" but it has to be treated as a building for the purpose of depreciation. In the circumstances, so far as the portion of question No. 1, which pertains to building is concerned, we answer the question in the negative i.e. in favour of the revenue and against the assessee.

4. So far as the furniture and fixtures are concerned, looking to the orders which have been annexed to the paper-book, it is not possible for us to know complete details about the furniture and fixtures. In absence of such details, we are unable to opine whether the furniture and fixtures, which have been referred to, can be treated as "plant" and whether the assessee would be entitled to claim depreciation as if the furniture and fixtures are plant. In view of incomplete information, we decline to answer the question insofar as it pertains to furniture and fixtures, and direct the Tribunal to ascertain the facts by knowing the details about the items included under the head "Furniture & Fixtures" and

after considering the relevant sections of the Act and the law laid down on the subject, decide whether individual items included under the head "furniture & fixtures" are "plant" or otherwise.

5. The first question which has been referred to this Court at the instance of the revenue is answered accordingly.

6. So far as the second question, which has been referred at the instance of the assessee is concerned, it pertains to investment allowance of Rs. 1,35,403/- in respect of electrical installations, ice-cream making machine, refrigerator, etc.

7. The Hon'ble Supreme Court has held in case of Indian Hotels Co. Ltd. & Ors. v. I.T.O. & Ors., 245 ITR 538 that business of hotel is not an industry which manufactures or produces anything. In view of the law laid down by the Supreme Court in the said case, the assessee cannot avail of any advantage of deduction under the provisions of sec. 32A of the Act and, therefore, the question which has been referred to this court at the instance of the assessee, is answered in the negative, i.e., against the assessee and in favour of the revenue.

The reference thus stands disposed of with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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